



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL
PROPERTY)**

Case reference : **LON/00BK/OLR/2020/1050**

HMCTS code : **V: VIDEO**

Property : **1 Alec Court, 47 Catherine Place,
London SW1E 6DY**

Applicant : **Mr M A Pritchard**

Representative : **Mike Stapleton & Co chartered
surveyors**

Respondent : **18-19 Buckingham Gate Investments
Limited**

Representative : **Sheridan & Stretton LLP**

Type of application : **Section 48 Leasehold Reform Housing
and Urban Development Act 1993**

Tribunal members : **Judge Pittaway
Mrs A Rawlence MRICS**

Date of hearing : **25 May 2021**

Date of decision : **21 June 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been not objected to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents before the tribunal at the hearing were;

1. The applicant's bundle of documents (68 pages)
2. The proof of evidence of Mr M Tims of Michael Tims and Company (139 pages)
3. Mr Tims' revised valuation calculation.
4. A statement of agreed facts dated 25 May 2021 (7 pages)

Summary of the tribunal's decision

1. It is not for the tribunal to act as arbitrator in determining the reviewed rent.
2. Once the reviewed rent has been agreed or determined it should be capitalised at a rate of 4.5%.
3. The tribunal notes that both parties have agreed a reversionary value of £8,083, using an agreed deferment rate of 5%.
4. Once the capitalised rent has been agreed the tribunal expect that the parties will be in a position to agree the premium payable to the freeholder but should they not be in a position they may re-apply to the tribunal to determine the same.
5. The tribunal determines that the premium to be paid for the intermediate lease is £14.00.

The Application

6. This is an application made by Mr Mark Andrew Pritchard pursuant to section 48 (1) Leasehold Reform Housing and Urban Development Act 1993 ("**the 1993 Act**") for a determination of the premium to be paid for a lease extension, or other terms of acquisition of the lease of the 1 Alec Court, 47 Catherine Place, London SW1E 6DY (the "**Property**").
7. By a notice of claim dated 11 March 2020, served pursuant to Section 42 of the Act, Mr Pritchard exercised his right to claim a new lease of the property and proposed to pay a premium of £11,058 for the new lease, £7,745 being paid to the respondent in its capacity as freeholder and £3,313 being paid to the respondent in its capacity as head leaseholder.

8. On 6 May 2020 the respondent landlord served a counter-notice admitting the validity of the claim and counter-proposing a premium of £71,209 for the new lease, £63,090 to be paid to the respondent in its capacity as freeholder and £8,119 to be paid to the respondent in its capacity as head leaseholder
9. On 4 October 2020 the applicant applied to the tribunal for a determination of the premium.

The issues

Matters agreed

10. There was no Statement of Agreed facts in the bundles before the tribunal but one was provided to the tribunal on the date of the hearing which set out that the following was agreed.

- (i) Unexpired term at valuation date: 87.28 years
- (ii) Term of the headlease at the valuation date: 87.41 years
- (iii) The initial rent payable under the lease: £200
- (iv) Rent review dates under the lease: 25.12.1999 and every 20 years
- (v) Deferment rate: 5%
- (vi) The property has an area of 435 ft².
- (vii) There are no tenant's improvements.
- (viii) Reversionary value £8,083

The tribunal were advised that this value was agreed on the basis of an agreed freehold vacant possession value of £575,000, but that this freehold vacant possession value was agreed only for the purposes of the calculations in connection with the application before the tribunal, not agreed for rent review purposes.

11. The valuers were not concerned with the existing lease value as there is no marriage value to calculate given the unexpired term of the lease.
12. At the hearing the tribunal were advised that the form of the lease was agreed.

Matters not agreed

13. The capitalisation rate for the ground rent. For the applicant Mr Stapleton submitted that a rent of £200 p.a. should be capitalised at 6%.
14. The rent to be used in the valuation. For the respondent Mr Tims contended that the reviewed rent for the property would be £2,349 p.a. based on 0.4% of a long leasehold value of £587,250. For the respondent

Mr Tims submitted that a rent of £2,349 p.a. should be capitalised at 3.35%.

15. The premium to be paid.. The applicant's valuation placed this at £11,058 and the respondent's valuation placed this at £74,571.

The hearing

16. The hearing took place on 25 May 2021. The tribunal heard evidence and submissions from Mr Stapleton FRICS acting for the applicant and from Mr Tims FNAEA and Mr Sheridan acting for the respondent.
17. Neither party asked the tribunal to inspect the property and the tribunal did not consider it necessary to carry out a physical inspection to make its determination.
18. The applicant relied upon the expert report and valuation of Mr Stapleton dated 5 May 2021 and the respondent relied upon the expert report and valuation of Mr Tims dated 17 May 2021.
19. Mr Tims referred the tribunal to the decision in *Emmanuel House (Freehold) Limited v Berkeley Seventy Six Limited* CHI/21UC/OCE/2017/0025 (the '**All Saints Case**').
20. The tribunal referred the parties to the decision in *The Cedars (Belmont Hill) Limited v A D Shamash and D Shamas* LON/00AZ/OCE/2018/0120 (the '**Cedars Case**').

Background

21. The property is a self-contained ground floor flat in a purpose-built block of eight flats constructed some 40 years ago.
22. The property is held by the applicant under an underlease dated 16 November 1984 for a term of 125 years from 1982. On the valuation date the unexpired term of the headlease was 87.28 years.
23. There is a headlease dated 14 March 2014 for a term expiring on 10 August. On the valuation date the unexpired term of the headlease was 87.41 years.
24. The rent initially reserved by the underlease was £200, with provision for the rent to be reviewed every twenty years (the first review to be on 25 December 1999, the second on 25 December 2019 and thereafter every twenty years). At review the rent is reviewed to the greater of the then passing rent and the sum representing 0.4% of the open market capital value of the property at the review date, with vacant possession and based on the original lease and term.

Evidence and submissions

25. For the applicant Mr Stapleton submitted that despite the rent review provisions in the lease the rent had never been reviewed. At the date of the valuation the ground rent was being paid at £200 per annum. In his submission it was not for the tribunal to act as the arbitrator

contemplated by the lease and settle what the reviewed rent as at 25 December 2019 might have been. The tribunal should simply look at what rent was being paid on the valuation date, namely £200, and Mr Stapleton submitted that this rent should be capitalised at 6%. He accepted that given the ability to review the rent under the lease on future review dates it might be appropriate to adjust the rate of capitalisation but did not suggest to what.

26. On being questioned by the tribunal Me Stapleton submitted that it was appropriate to look at the actual passing rent although it might be appropriate to move from the usual 6% capitalisation rate. He confirmed that no formal notice of rent review had been served.
27. Mr Tims submitted that as the rent review provisions in the lease had no timing constraints and did not make time of the essence the tribunal could not ignore the impact of such a review process on a statutory lease extension, referring the tribunal to paragraph 3(1) of Schedule 13 of the 1993 Act. Mr Tims referred the tribunal to the decision in the *All Saints Case* where a capitalisation rate of 3.35% was adopted where the ground rent was reviewed every 15 years with reference to the published RPI index. He accepted that that case involved 52 flats, that the rent was reviewed more frequently but submitted that a review by reference to property price inflation was more attractive than indexation by reference to monthly RPI. He submitted that a review by reference to property values was more constant and rarely shows negative growth. He submitted that a rate of capitalisation of 3.35% was appropriate here, and invited the tribunal to accept this as precedent.
28. On being cross-examined Mr Tims confirmed that only the landlord could review settlement of the rent review to arbitration under the lease. He did not accept that the review of the ground rent was so onerous that it would impact on the value of the property.
29. Mr Tims had increased the existing leasehold value by 2% to reflect the ability to control the freehold. However he did not give any evidence as to why this should deviate from the usual 1% increase.
30. The tribunal referred Mr Tims to the decision in the *Cedars Case* where a capitalisation rate of 4.75% was adopted in relation to a rent which increased with reference to the value of the block involved (it being a collective enfranchisement case). Mr Tims considered that it might be distinguishable on other factors, such as its location not being prime central London, and that the present application involved a single unit and therefore a single ground rent.
31. For the respondent Mr Sheridan submitted that there is no requirement in the underlease for notice of rent review to be served. The respondent was not asking the tribunal to arbitrate on the issue of the reviewed rent but invited the tribunal to take Mr Tims' valuation evidence and apply it. The general presumption is that time is not of the essence of rent review

clauses although this can be rebutted by contra indications but there were none in this case.

32. Mr Stapleton repeated that it was not for the tribunal to act as arbitrator in the rent review proceedings; and only the landlord was able to instigate the review process and had not done so. As for a capitalisation rate he preferred that proposed in the *Cedars Case* and suggested an alternative to his original capitalisation rate of 4.5%.
33. Mr Stapleton did not distinguish between the unexpired term of the existing lease of the property and the unexpired term of the headlease. Mr Tims did refer to the short three month period between the expiry of the existing lease and the head lease. He submitted that a short letting might be possible during this period, which might achieve a rent of £6000 based on a weekly rent of £500.

Reasons for the tribunal's determination

34. The tribunal agree with Mr Stapleton's submission that it is not for them to act as arbitrator in the ongoing rent review. It further finds that it is not appropriate for it to determine the valuation before the reviewed rent is determined.
35. Clause 6(ii) of the lease provides for the ground rent to be reviewed to the greater of the passing rent and 0.4% of the market value of the flat. 'Market value' is 'deemed to be the value at which the Flat could be sold on the open market between a willing Vendor and a willing Purchaser with vacant possession for a term equivalent to the term hereby granted with the same provision for review and otherwise subject to the same provisions as this Lease.' The clause further provides that, 'The market value shall at any time either before or after the review date be agreed in writing between the Lessor and the Lessee or in default of such agreement shall be determined on the foregoing basis by a person acting as an arbitrator nominated (in default of agreement between the lessor and the Lessee as to such person) by the President for the time being of the Royal Institution of Chartered Surveyors on the application of the Lessor whose decision shall be final and binding on the parties hereto.' The clause also provides for any reviewed rent to be back-dated to the review date.
36. Under the terms of the underlease the reviewed rent can be determined after the date specified for its review. The reviewed rent can be backdated. The tribunal find that the reviewed rent, once ascertained, rather than a rent of £200 is that which should be used in the valuation.
37. It is for the tribunal to consider whether a reduction in the capitalisation rate should be made to reflect the substantially increased ground rent that may be payable once the current rent review is settled, and the

prospect of further increases on subsequent reviews. The income that a hypothetical purchaser is significant and given the threat of forfeiture for non-payment the cost of recovery should not be the deterrent that it is with small fixed ground rents.

38. The tribunal would have preferred the valuers to have set out arguments on capitalisation rates based on the value of the investment given the review provisions on a stand-alone basis rather than by reference to previous decisions, which neither valuer did. Accordingly the tribunal is faced with fixing the rate with no substantive argument before it as to the level it should fix. It is not bound by the decision in either the *All Saints Case* nor the *Cedars Case*, but in the absence of any other basis upon which to fix the rate the tribunal has considered the rates in the two cases and the basis upon which they were reached. A rate calculated with reference to market value (albeit of a freehold where a number of ground rents were involved) is a more useful comparison than one where the review was by reference to RPI. The position here differs from that in the *Cedars Case* as it involves only one ground rent with an accordingly lower risk of failure to recover it.
39. The tribunal accordingly find that the appropriate rate of capitalisation is 4.5%.
40. The tribunal find it unlikely that the intermediate landlord would be in a position to rent the flat immediately on expiry of the existing lease, and that it would therefore be more realistic to attribute a possible rental value of, say £1000, to the three month period when a letting might be possible. This deferred, represented a value of £14 to the intermediate landlord.

Name: Judge Pittaway

Date: 21 June 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

